

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**PETER ANTHONY GUTIERREZ,**

**Defendant.**

**Case No. 95-CR-152-TCK**

**OPINION AND ORDER**

On June 7, 2010, Defendant, a federal inmate appearing *pro se*, filed a “Rule 36 Motion to Correct an Error in the Record Arising from Oversight or Omission” (Dkt. # 54). In addition, on June 21, 2010, Defendant filed a petition for writ of mandamus at the Tenth Circuit Court of Appeals requesting the appellate court to direct this district court to correct an “error in the record arising from oversight or admission [sic].” See Dkt. # 57. Defendant claims that the “Judgment in a Criminal Case,” filed in this matter on September 18, 1996, see Dkt. # 15; Dkt. # 54, Ex. 3, contains a clerical error. He contends that the record provided along with his motion supports his claim that this Court intended his federal and state sentences to be served concurrently and that the omission of any such indication from the judgment was a clerical error.

The Court has reviewed the record provided by Defendant and finds no clerical error in the judgment. The oral pronouncement by this Court cited by Defendant, see Dkt. # 54, Ex. 1, is not a clear statement that the Court intended his federal sentence to be served concurrently with his state sentence. Instead, the Court addressed defense counsel’s concern that Defendant receive credit for time served during pendency of the criminal charges. Furthermore, “a federal court is not bound by the determination of a state court as to whether a prisoner’s federal sentence should be consecutive or concurrent.” United States v. Waldrup, 42 Fed.Appx. 367, 369 n.1 (10th Cir. 2002) (unpublished)

(citing United States v. Williams, 46 F.3d 57, 58 (10th Cir. 1995)). Defendant's "Rule 36 Motion to Correct an Error in the Record Arising from Oversight or Omission" shall be denied.

**ACCORDINGLY, IT IS HEREBY ORDERED that:**

1. Defendant's "Rule 36 Motion to Correct an Error in the Record Arising from Oversight or Omission" (Dkt. # 54) is **denied**.
2. The Clerk shall send a copy of this Order to the Tenth Circuit Court of Appeals as it relates to Tenth Circuit Case No. 10-5078.

DATED THIS 1st day of July, 2010.

A handwritten signature in black ink, reading "Terence C. Kern". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

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TERENCE C. KERN  
UNITED STATES DISTRICT JUDGE